

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2381 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MADHUBHAI BHURABHAI ROJAMDAR

Versus

EXECUTIVE ENGINEER  
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Appearance:

MR KS JHAVERI for Petitioner  
MR B.Y.MANKAD, AGP FOR M/S PATEL ADVOCATES for  
Respondent No. 1,2 & 3  
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. This petition is filed by the petitioner working as Watchman under respondents under Article 226 of the Constitution of India for a writ of mandamus or any other appropriate writ, order or direction for quashing and setting aside the order dated 28th April,1987 at Annex.A to the petition, whereby the services of the petitioner

were terminated.

2. The petitioner is a Class:IV employee working as a Watchman in the office of respondents at Surat. It is contended that between 8th July, 1984 to 10th July, 1984, when he was posted as a Watchman (Chokidar) on the Stores situated at Ichchhanath Road at Surat, theft of iron rods was committed. In that connection, after a long lapse of period, on 30.4.1987, services of the petitioner came to be terminated vide order dated 28.4.1987 which is under challenge in this petition.

3. The day on which petition was placed before this Court for admission, notice was issued and considering the facts and circumstances of the case, ad-interim relief in terms of para-15(B) was granted. On perusal of the docket-sheet, it is clear that on 10.7.1987, this petition was admitted and Rule was issued. Ad-interim relief granted earlier was also made absolute.

4. I have gone through the impugned order at Annex.A. It clearly transpires from the impugned order that the explanation given by the petitioner is transparent and even if it is believed for the sake of arguments that the petitioner was not very vigilant at the relevant point of time when theft was committed, termination of service of a watchman who himself is not guilty for committing theft, can be said to be very harsh and grossly disproportionate punishment. It is important to note that till this date, averments made in the petition are not resisted by the respondents by filing affidavit-in-reply and averments made by the petitioner in the petition on oath have remained uncontroverted. When this matter came up for hearing before this Court on 23.6.2000, a positive query was raised and learned AGP Mr. Mankad was asked to ascertain whether department intends to proceed with this petition in light of the fact that the petitioner is still in service in the very department. Today, I am told by learned AGP Mr. Mankad for M/s Patel Advocates for the respondents that Mr. Patel, learned Solicitor appearing for the respondents has written a letter on 23.6.2000 addressed to the concerned officer, but the same is not replied.

5. Irrespective of the fact that affidavit-in-reply is not filed, from the facts and circumstances of the case and averments made in the petition, I am satisfied that the order of termination at Annex.A is bad-in-law and grossly disproportionate. It cannot be said to be an order of termination simpliciter, but the same is stigmatic order and such a drastic, harsh stigmatic order cannot be passed without following the principles of

natural justice, even if it is believed for the sake of arguments that the person concerned was not vigilant or has shown some negligence in his duties. Plain reading of the order Annex.A reveals that though the same is in the notice form, in fact, it is a termination order and no opportunity of hearing is afforded to the petitioner before imposing such a harsh punishment. On the contrary, from the averments made in para-7 of the petition, it is clear that at the instance of the complaint filed by the petitioner, criminal case No. 5391/84 was registered in the Court of learned Judicial Magistrate (F.C.), Surat for the offences punishable under sections 379, 114 of the IPC and iron rods weighing about 4 Tonnes stolen from the Stores of the respondent, were recovered from the real culprits. Thus, there was no actual loss caused to the respondent State. Learned counsel Mr. Zaveri for the petitioner has also submitted that till this date the petitioner is in service and is enjoying all the benefits and, therefore, even if impugned order Annex.A is quashed and set aside, the question of payment of back wages or arrears of wages will not arise.

6. In view of the facts and circumstances stated above, it is held that the impugned order Annex.A is harsh, bad-in-law and grossly disproportionate and hence the same is quashed and set aside. Rule is made absolute. Respondents are directed to continue the petitioner in service as if no order of termination qua the petitioner is passed on 28.4.1987. Interim relief granted earlier by this Court is made absolute. In view of peculiar facts and circumstances of the case, no order as to costs.

21.7.2000 [ C.K. BUCH, J ]

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